

Article Ten

Enforcement and Penalties



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10.1 Authority

The Plan Commission, Board of Zoning Appeals, and/or the Planning Director and their delegates are designated to enforce the provisions, regulations, and intent of this Zoning Ordinance.

10.2 Violations

Complaints made pertaining to the Zoning Ordinance may be investigated by the Planning Director. Also, any violations suspected by the Plan Commission, Common Council or Planning Director shall be investigated by the Planning Director. Action may or may not be taken depending on the findings. The degree of action will be at the discretion of the investigating person(s) and should reflect what is warranted by the violation.

10.3 Inspection of Property

Standard Inspections: Inspections of property may be conducted by the Planning Director or City Engineer either from a right-of-way, property suspected of a violation, or adjacent property. The inspector shall attempt to present sufficient evidence of their authorization (identification, badge, or paperwork) and described the purpose of the inspection to the owner, tenant, or occupant at the time of the inspection. In the event no one is present to demonstrate said authorization, the inspector may conduct the inspection.

Emergency Remedy: When, in the opinion of the Planning Director or City Engineer, the condition of the site causes danger to the health, safety, or welfare of the public, the city may enter upon the site to remedy the dangerous condition without notice to the responsible party or landowner

Denial of Access to Property: In the event that the inspector(s) is (are) denied entry, and providing there is evidence of violation of this Zoning Ordinance, a city official may apply to the court of jurisdiction to invoke legal, equitable, or special remedy for the enforcement of the Zoning Ordinance or any applicable ordinances adopted under State Code.

10.4 Responsibility of Violations

The owner, tenant, and/or occupant of any property or building, or part thereof, shall be responsible for the violation. Architects, builders, developers, or agents thereof may also be found responsible for the violation if evidence of their involvement or negligence is found. Ultimately, if fault is not clearly found in whole or in part in persons other than the Owner, the Owner shall be held responsible in whole or in part as warranted by the Plan Commission, Board of Zoning Appeals or Planning Director.

10.5 Liability

A structure that is erected or converted, or land used in violation of this Zoning Ordinance or its subsequent amendments may be deemed a common nuisance and the owner or possessor of the structure, or land is liable for said nuisance.

10.6 Violations During the Construction/Building Process

The Plan Commission or Planning Director may place a stop-work-order or violation notice on any lot improvement process. Stop-work-orders shall be issued by written notice which shall state the violation and that work or the illegal activity must stop immediately until the matter is resolved. This letter shall be posted in a conspicuous place or be delivered/mailed to the owner, developer, property manager, tenant, or occupant. The Plan Commission or Planning Director must meet with the person(s) served the stop-work-order notice within 7 days of such a request. A memorandum of agreement shall be drafted stating the conditions in which construction or action may be resumed. This memorandum of agreement must be signed by the owner, developer, property manager, tenant, or occupant that has caused or is responsible for the violation and the Planning Director or Plan Commission President.

A. Reasons for a Stop-Work-Order include:

- Not complying with Development Standards and/or any regulations of the Zoning or Subdivision Control Ordinance.
- Not obtaining an Improvement Location Permit.
- Not meeting the conditions or commitments of a special exception, variance, or Building Permit.
- Not meeting the conditions of Development Commitments, Development Plans, Detail Plans, or covenants which are enforceable by the Plan Commission.
- Not obtaining any other permit necessary for site/property improvement as called out in local Code, Zoning Ordinance, or Subdivision Control Ordinance.
- Illegal use or expansion of use of building/structures or building/structures and land in combination.

10.7 Types of Violations

The following items shall be deemed civil zoning violations, enforceable by the Plan Commission, and/or Planning Director. Penalties may be imposed based on the provisions set forth in this Article.

- A. The placement of a primary structure, accessory structure, sign, structures or any other element which does not conform with the provisions or explicit intent of the Zoning Ordinance as determined by the Plan Commission or Planning Director.
- B. The erection of a primary structure, accessory structure, sign, structures or any other element which does not conform with the provisions or explicit intent of the Zoning Ordinance as determined by the Plan Commission or Planning Director.
- C. Failure to obtain an Improvement Location Permit or any other required permit under this Zoning Ordinance when required prior to initiation of improvements, change of land use, or other modifications regulated under this Zoning Ordinance.
- D. Conducting a use or uses that do not comply with the provisions or explicit intent of the Zoning Ordinance.
- E. Any failure to comply with and/or any regulations of the Zoning Ordinance, including, but not limited to the following: Development Standards, Improvement Location Permit, Development Plan, Planned Development, or Conditions imposed.
- F. Proceeding with work under a stop-work-order or a violation of a Memorandum of agreement.
- G. Any failure to comply with commitments made in connection with a rezoning, approval of a development plan, detailed plan, special exception, variance, or other similar or documentable commitment, including verbal agreements during official Plan Commission, Common Council, or BZA meetings.
- H. Failure to obtain a Certificate of Occupancy.

10.8 Procedure for Violations

There shall be a three step procedure for violations of this Zoning Ordinance. These steps are as follows:

A. Notice of Violation

1. The Plan Commission or the Planning Director shall issue a notice of violation by certified mail to the person(s) who have committed a violation. The notice of violation will state that a violation has occurred; that it must be corrected within 15 days of the postmark on the notice of violation; and that if the violation is not corrected the fines listed in the notice of violation will be imposed. The notice of violation will include a list of fines and penalties.
2. If the violation is corrected within the 15 day period, no further action will be taken and no fines will be imposed.
3. The Planning Director may grant an extension of the 15 day period if the person(s) in violation has made a significant effort to correct the violation but cannot meet the deadline. The Planning Director may require a memorandum of agreement in order to extend the deadline.

B. Fine Imposition

1. If the violation stated in the notice of violation is not corrected within 15 days, the fine shall be imposed. The person(s) in violation shall pay the fine and correct the violation within 30 days of the notice of violation or face additional fines.
2. The Planning Director may extend the time period to correct the violation if, in the judgment of the Planning Director, the violator has made substantial progress to correct the violation.

C. Failure to pay fines or comply

If the person(s) in violation refuses to pay the fine and/or correct the violation, the Plan Commission or the Planning Director may impose additional fines and/or take legal action.

D. Additional Notice

It is not mandatory that a violator receives more than one notice of violation before legal action is taken. The Plan Commission or the Planning Director shall determine the action necessary to remedy a violation if a notice of violation is not effective.

10.9 Fines and Penalties

In addition to any other remedies, including injunctive relief provided herein, any person, firm, partnership, corporation or other entity who or which shall violate any provision of this Zoning Ordinance shall, upon conviction thereof, be fined in any sum not less than fifty dollars (\$50.00), nor more than two thousand five hundred dollars (\$2,500), with each day constituting a separate violation of this Zoning Ordinance.

10.10 Appeals or Trials

Any person receiving a notice of violation may appeal the violation to the Board of Zoning Appeals.

- A. A written statement from the person in violation shall be submitted to the Planning Director via Certified Mail at least 3 days prior to the date the fine is due.
- B. The Planning Director shall set the date for hearing the appeal before the Board of Zoning Appeals and notify the person of the date of the certified mail. Collection of the fines will be postponed until the BZA has made a ruling as to the violation. Fines will not accumulate during the appeals process.
- C. The person may appeal the ruling of the BZA to the court of jurisdiction as provided by IC 36-7-4-1003. Collection of fines will be postponed until the court has made a ruling as to the appeal. Fines will not accumulate during the court appeals process.

10.11 Enforcement, Remedies, and Injunctive Relief

All remedies and enforcement shall comply with the powers set forth in IC 36-7-4-1000 et. seq. and all other applicable state law.

- A. The Plan Commission or any enforcement official designated by the Zoning Ordinance may bring an action in the Circuit or Superior Court of the County to evoke any legal, equitable, or special remedy, for the enforcement of any ordinance or regulation created under IC 36-7-4, and its subsequent amendments this includes but its not limited to the Zoning Ordinance and Subdivision Control Ordinance.
- B. The plan commission or any enforcement official designated by the Zoning Ordinance may also bring an action in the Circuit or Superior Court of the County to enforce:
 - a. All agreements between plan commission or its designees which have been recorded as covenants in connection with a subdivision plat, a development plan, or a planned development.
 - b. All commitments made in accordance with IC 36-7-4 et seq.
 - c. All conditions imposed in accordance with IC 36-7-4 et seq.
- C. The Board of Zoning Appeals, or any enforcement official designated by this Ordinance may bring action in the Circuit or Superior Court of the County to restrain a person violating IC 36-7-4 et seq. or any ordinance adopted under IC 36-7-4 et seq. which includes but is not limited to the Zoning Ordinance and Subdivision Control Ordinance.
- D. The Board of Zoning Appeals or any enforcement official designated by this Ordinance may also bring an action in the Circuit or Superior Court of the County for a mandatory injunction, directing to remove a structure erected in violation of this Ordinance or applicable state code.
- E. If the Board of Zoning Appeals, or its designated enforcement official is successful in its action, the respondent shall bear all costs of the action.
- F. An action to enforce a commitment made in accordance with IC 36-7-4 et seq. may be brought in the Circuit or Superior Court of the County by:
 - a. Any person who is entitled to enforce a commitment made in accordance with IC 36-7-4 et al. under the rules of the Plan Commission or the Board of Zoning Appeals in force at the time the commitment was made; or
 - b. Any other specially affected person who was designated in the commitment.

